

104TH CONGRESS
1ST SESSION

S. 30

To amend the Social Security Act to increase the earnings limit, to amend the Internal Revenue Code of 1986 to repeal the increase in the tax on social security benefits and to provide incentives for the purchase of long-term care insurance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

Mr. MCCAIN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Social Security Act to increase the earnings limit, to amend the Internal Revenue Code of 1986 to repeal the increase in the tax on social security benefits and to provide incentives for the purchase of long-term care insurance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Senior Citizens’ Equity
5 Act”.

TITLE I—SOCIAL SECURITY
EARNINGS TEST

SEC. 101. ADJUSTMENTS IN MONTHLY EXEMPT AMOUNT
FOR PURPOSES OF THE SOCIAL SECURITY
EARNINGS TEST.

(A) INCREASE IN MONTHLY EXEMPT AMOUNT FOR
INDIVIDUALS WHO HAVE ATTAINED RETIREMENT
AGE.—Section 203(f)(8)(D) of the Social Security Act (42
U.S.C. 403(f)(8)(D)) is amended to read as follows:

“(D)(i) Notwithstanding any other provision of
this subsection, the exempt amount which is applica-
ble to an individual who has attained retirement age
(as defined in section 216(1)) before the close of the
taxable year involved shall be—

“(I) for the taxable year beginning after
1995 and before 1997, \$1,250.00,

“(II) for the taxable year beginning after
1996 and before 1998, \$1,583.33¹/₃,

“(III) for the taxable year beginning after
1997 and before 1999, \$1,916.66²/₃,

“(IV) for the taxable year beginning after
1998 and before 2000, \$2,250.00, and

“(V) for the taxable year beginning after
1999 and before 2001, \$2,500.00.

1 “(ii) For purposes of subparagraph (B)(ii)(II),
 2 the increase in the exempt amount provided under
 3 clause (i)(V) shall be deemed to have resulted from
 4 a determination which shall be deemed to have been
 5 made under subparagraph (A) in 1999.”.

6 (b) CONFORMING AMENDMENTS.—The second sen-
 7 tence of section 223(d)(4) of such Act (42 U.S.C.
 8 423(d)(4)) is amended by striking “the exempt amount
 9 under section 203(f)(8) which is applicable to individuals
 10 described in subparagraph (D) thereof” and inserting the
 11 following: “an amount equal to the exempt amount which
 12 would have been applicable under section 203(f)(8), to in-
 13 dividuals described in subparagraph (D) thereof, if section
 14 101 of the Senior Citizens’ Equity Act had not been en-
 15 acted”.

16 **SEC. 102. EFFECTIVE DATE.**

17 The amendments made by section 101 shall apply
 18 with respect to taxable years beginning after 1995.

19 **TITLE II—REPEAL OF INCREASE**
 20 **IN TAX ON SOCIAL SECURITY**
 21 **BENEFITS**

22 **SEC. 201. REPEAL OF INCREASE IN TAX ON SOCIAL SECU-**
 23 **RITY BENEFITS.**

24 (a) IN GENERAL.—Subsection (a) of section 86 of the
 25 Internal Revenue Code of 1986 (relating to social security

1 and tier 1 railroad retirement benefits) is amended by
 2 adding at the end the following new paragraph:

3 “(3) PHASEOUT OF ADDITIONAL AMOUNT.—In
 4 the case of any taxable year beginning in a calendar
 5 year after 1995 and before 2000, paragraph (2)
 6 shall be applied by substituting the percentage deter-
 7 mined under the following table for ‘85 percent’ each
 8 place it appears:

**“In the case of a taxable
 year beginning in cal-
 endar year:**

The percentage is:

1996	75 percent
1997	65 percent
1998	60 percent
1999	55 percent.”

9 (b) TERMINATION OF ADDITIONAL AMOUNT.—Para-
 10 graph (2) of section 86(a) of such Code is amended by
 11 adding at the end the following new flush sentence:

12 “This paragraph shall not apply to any taxable year
 13 beginning after December 31, 1999.”

14 (c) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to taxable years beginning after
 16 December 31, 1995.

17 **TITLE III—TREATMENT OF** 18 **LONG-TERM CARE**

19 **SEC. 301. TREATMENT OF LONG-TERM CARE INSURANCE** 20 **OR PLANS.**

21 (a) GENERAL RULE.—Subpart E of part I of sub-
 22 chapter L of chapter 1 of the Internal Revenue Code of

1 1986 is amended by inserting after section 818 the follow-
2 ing new section:

3 **“SEC. 818A. TREATMENT OF LONG-TERM CARE INSURANCE**
4 **OR PLANS.**

5 “(a) GENERAL RULE.—For purposes of this part, a
6 long-term care insurance contract shall be treated as an
7 accident or health insurance contract.

8 “(b) LONG-TERM CARE INSURANCE CONTRACT.—

9 “(1) IN GENERAL.—For purposes of this part,
10 the term ‘long-term care insurance contract’ means
11 any insurance contract if—

12 “(A) the only insurance protection pro-
13 vided under such contract is coverage of quali-
14 fied long-term care services and benefits inci-
15 dental to such coverage,

16 “(B) the maximum benefit under the pol-
17 icy for expenses incurred for any day does not
18 exceed \$200,

19 “(C) such contract does not cover expenses
20 incurred for services or items to the extent that
21 such expenses are reimbursable under title
22 XVIII of the Social Security Act or would be so
23 reimbursable but for the application of a de-
24 ductible or coinsurance amount,

1 “(D) such contract is guaranteed renew-
2 able,

3 “(E) such contract does not have any cash
4 surrender value, and

5 “(F) all refunds of premiums, and all pol-
6 icyholder dividends or similar amounts, under
7 such contract are to be applied as a reduction
8 in future premiums or to increase future bene-
9 fits.

10 “(2) SPECIAL RULES.—

11 “(A) PER DIEM, ETC. PAYMENTS PER-
12 MITTED.—A contract shall not fail to be treated
13 as described in paragraph (1)(A) by reason of
14 payments being made on a per diem or other
15 periodic basis without regard to the expenses
16 incurred during the period to which the pay-
17 ments relate.

18 “(B) CONTRACT MAY COVER MEDICARE
19 REIMBURSABLE EXPENSES WHERE MEDICARE
20 IS SECONDARY PAYOR.—Paragraph (1)(C) shall
21 not apply to expenses which are reimbursable
22 under title XVIII of the Social Security Act
23 only as a secondary payor.

24 “(C) REFUNDS OF PREMIUMS.—Paragraph
25 (1)(F) shall not apply to any refund of pre-

1 miums on surrender or cancellation of the con-
2 tract.

3 “(c) QUALIFIED LONG-TERM CARE SERVICES.—For
4 purposes of this section—

5 “(1) IN GENERAL.—The term ‘qualified long-
6 term care services’ means necessary diagnostic, pre-
7 ventive, therapeutic, and rehabilitative services, and
8 maintenance or personal care services, which—

9 “(A) are required by a chronically ill indi-
10 vidual in a qualified facility, and

11 “(B) are provided pursuant to a plan of
12 care prescribed by a licensed health care practi-
13 tioner.

14 “(2) CHRONICALLY ILL INDIVIDUAL.—

15 “(A) IN GENERAL.—The term ‘chronically
16 ill individual’ means any individual who has
17 been certified by a licensed health care practi-
18 tioner as—

19 “(i)(I) being unable to perform (with-
20 out substantial assistance from another in-
21 dividual) at least 2 activities of daily living
22 (as defined in subparagraph (B)) for a pe-
23 riod of at least 90 days due to a loss of
24 functional capacity, or

1 “(II) having a level of disability simi-
2 lar (as determined by the Secretary in con-
3 sultation with the Secretary of Health and
4 Human Services) to the level of disability
5 described in subclause (I), or

6 “(ii) having a similar level of disabil-
7 ity due to cognitive impairment.

8 “(B) ACTIVITIES OF DAILY LIVING.—For
9 purposes of subparagraph (A), each of the fol-
10 lowing is an activity of daily living:

11 “(i) MOBILITY.—The process of walk-
12 ing or wheeling on a level surface which
13 may include the use of an assistive device
14 such as a cane, walker, wheelchair, or
15 brace.

16 “(ii) DRESSING.—The overall complex
17 behavior of getting clothes from closets
18 and drawers and then getting dressed.

19 “(iii) TOILETING AND BATHING.—
20 Each of the following shall be treated as 1
21 activity:

22 “(I) The act of going to the toilet
23 room for bowel and bladder function,
24 transferring on and off the toilet,
25 cleaning after elimination, and ar-

1 ranging clothes or the ability to volun-
2 tarily control bowel and bladder func-
3 tion, or in the event of incontinence,
4 the ability to maintain a reasonable
5 level of personal hygiene.

6 “(II) The overall complex behav-
7 ior of getting water and cleansing the
8 whole body, including turning on the
9 water for a bath, shower, or sponge
10 bath, getting to, in, and out of a tub
11 or shower, and washing and drying
12 oneself.

13 “(iv) TRANSFER.—The process of get-
14 ting in and out of bed or in and out of a
15 chair or wheelchair.

16 “(v) EATING.—The process of getting
17 food from a plate or its equivalent into the
18 mouth.

19 “(3) QUALIFIED FACILITY.—The term ‘quali-
20 fied facility’ means—

21 “(A) a nursing, rehabilitative, hospice, or
22 adult day care facility (including a hospital, re-
23 tirement home, nursing home, skilled nursing
24 facility, intermediate care facility, or similar
25 institution—

1 “(i) which is licensed under State law,
2 or

3 “(ii) which is a certified facility for
4 purposes of title XVIII or XIX of the So-
5 cial Security Act, or

6 “(B) an individual’s home if a licensed
7 health care practitioner certifies that without
8 home care the individual would have to be cared
9 for in a facility described in subparagraph (A).

10 “(4) MAINTENANCE OR PERSONAL CARE SERV-
11 ICES.—The term ‘maintenance or personal care serv-
12 ices’ means any care the primary purpose of which
13 is to provide needed assistance with any of the ac-
14 tivities of daily living described in paragraph (2)(B).

15 “(5) LICENSED HEALTH CARE PRACTI-
16 TIONER.—The term ‘licensed health care practi-
17 tioner’ means any physician (as defined in section
18 1861(r) of the Social Security Act) and any reg-
19 istered professional nurse, licensed social worker, or
20 other individual who meets such requirements as
21 may be prescribed by the Secretary.

22 “(d) CONTINUATION COVERAGE EXCISE TAX NOT
23 TO APPLY.—This section shall not apply in determining
24 whether section 4980B (relating to failure to satisfy con-

1 tinuation coverage requirements of group health plans) ap-
2 plies.

3 “(e) INFLATION ADJUSTMENT OF \$200 BENEFIT
4 LIMIT.—

5 “(1) IN GENERAL.—In the case of a calendar
6 year after 1995, the \$200 amount contained in sub-
7 section (b)(1)(B) shall be increased for such cal-
8 endar year by the medical care cost adjustment for
9 such calendar year. If any increase determined
10 under the preceding sentence is not a multiple of
11 \$10, such increase shall be rounded to the nearest
12 multiple of \$10.

13 “(2) MEDICAL CARE COST ADJUSTMENT.—For
14 purposes of paragraph (1), the medical care cost ad-
15 justment for any calendar year is the percentage (if
16 any) by which—

17 “(A) the medical care component of the
18 Consumer Price Index (as defined in section
19 1(f)(5)) for August of the preceding calendar
20 year, exceeds

21 “(B) such component for August of 1994.”

22 (b) CLERICAL AMENDMENT.—The table of sections
23 for such subpart E is amended by inserting after the item
24 relating to section 818 the following new item:

“Sec. 818A. Treatment of long-term care insurance or plans.”

1 **SEC. 302. EXCLUSION FOR BENEFITS PROVIDED UNDER**
2 **LONG-TERM CARE INSURANCE; EXCLUSION**
3 **FOR EMPLOYER-PROVIDED COVERAGE.**

4 (a) IN GENERAL.—Subsection (a) of section 104 of
5 the Internal Revenue Code of 1986 (relating to compensa-
6 tion for injuries or sickness) is amended by striking “and”
7 at the end of paragraph (4), by striking the period at the
8 end of paragraph (5) and inserting “, and”, and by insert-
9 ing after paragraph (4) the following new paragraph:

10 “(6) benefits under a long-term care insurance
11 contract (as defined in section 818A(b)).”

12 (b) EXCLUSION FOR EMPLOYER-PROVIDED COV-
13 ERAGE.—Section 106 of such Code (relating to contribu-
14 tions by employer to accident and health plans) is amend-
15 ed by adding at the end thereof the following sentence:
16 “For purposes of the preceding sentence, the term ‘acci-
17 dent or health plan’ includes a long-term care insurance
18 contract (as defined in section 818A(b)).”

19 **SEC. 303. QUALIFIED LONG-TERM SERVICES TREATED AS**
20 **MEDICAL CARE.**

21 (a) GENERAL RULE.—Paragraph (1) of section
22 213(d) of the Internal Revenue Code of 1986 (defining
23 medical care) is amended by striking “or” at the end of
24 subparagraph (B), by redesignating subparagraph (C) as
25 subparagraph (D), and by inserting after subparagraph
26 (B) the following new subparagraph:

1 “(C) for qualified long-term care services
2 (as defined in section 818A(c)), or”.

3 (b) TECHNICAL AMENDMENTS.—

4 (1) Subparagraph (D) of section 213(d)(1) of
5 such Code (as redesignated by subsection (a)) is
6 amended by striking “subparagraphs (A) and (B)”
7 and inserting “subparagraphs (A), (B), and (C)”.

8 (2)(A) Paragraph (1) of section 213(d) of such
9 Code is amended by adding at the end thereof the
10 following new flush sentence:

11 “‘In the case of a long-term care insurance contract
12 (as defined in section 818A), only eligible long-term
13 care premiums (as defined in paragraph (10)) shall
14 be taken into account under subparagraph (D).’”

15 (B) Subsection (d) of section 213 is amended
16 by adding at the end the following new paragraph:

17 “(10) ELIGIBLE LONG-TERM CARE PRE-
18 MIUMS.—

19 “(A) IN GENERAL.—For purposes of this
20 section, the term ‘eligible long-term care pre-
21 miums’ means the amount paid during a tax-
22 able year for any long-term care insurance con-
23 tract (as defined in section 818A) covering an
24 individual, to the extent such amount does not

1 exceed the limitation determined under the fol-
 2 lowing table:

“In the case of an individual with an attained age before the close of the taxable year of:	The limitation is:
40 or less	\$200
More than 40 but not more than 50	375
More than 50 but not more than 60	750
More than 60 but not more than 70	1,600
More than 70	2,000.

3 “(B) INDEXING.—

4 “(i) IN GENERAL.—In the case of any
 5 taxable year beginning in a calendar year
 6 after 1995, each dollar amount contained
 7 in paragraph (1) shall be increased by the
 8 medical care cost adjustment of such
 9 amount for such calendar year. If any in-
 10 crease determined under the preceding sen-
 11 tence is not a multiple of \$10, such in-
 12 crease shall be rounded to the nearest mul-
 13 tiple of \$10.

14 “(ii) MEDICAL CARE COST ADJUST-
 15 MENT.—For purposes of clause (i), the
 16 medical care cost adjustment for any cal-
 17 endar year is the percentage (if any) by
 18 which—

19 “(I) the medical care component
 20 of the Consumer Price Index (as de-

1 fined in section 1(f)(5)) for August of
2 the preceding calendar year, exceeds
3 “(II) such component for August
4 of 1994.”

5 (3) Paragraph (6) of section 213(d) of such
6 Code is amended—

7 (A) by striking “subparagraphs (A) and
8 (B)” and inserting “subparagraphs (A), (B),
9 and (C)”, and

10 (B) by striking “paragraph (1)(C)” in sub-
11 paragraph (A) and inserting “paragraph
12 (1)(D)”.

13 (4) Paragraph (7) of section 213(d) of such
14 Code is amended by striking “subparagraphs (A)
15 and (B)” and inserting “subparagraphs (A), (B),
16 and (C)”.

17 **SEC. 304. CERTAIN EXCHANGES OF LIFE INSURANCE CON-**
18 **TRACTS FOR LONG-TERM CARE INSURANCE**
19 **CONTRACTS NOT TAXABLE.**

20 Subsection (a) of section 1035 of the Internal Reve-
21 nue Code of 1986 (relating to certain exchanges of insur-
22 ance contracts) is amended by striking the period at the
23 end of paragraph (3) and inserting “; or”, and by adding
24 at the end thereof the following new paragraph:

1 “(4) a contract of life insurance or an endow-
 2 ment or annuity contract for a long-term care insur-
 3 ance contract (as defined in section 818A).”

4 **SEC. 305. EXCLUSION FROM GROSS INCOME FOR AMOUNTS**
 5 **WITHDRAWN FROM INDIVIDUAL RETIRE-**
 6 **MENT PLANS OR 401(k) PLANS FOR LONG-**
 7 **TERM CARE INSURANCE.**

8 (a) IN GENERAL.—Part III of subchapter B of chap-
 9 ter 1 of the Internal Revenue Code of 1986 (relating to
 10 items specifically excluded from gross income) is amended
 11 by redesignating section 137 as section 138 and by insert-
 12 ing after section 136 the following new section:

13 **“SEC. 137. DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT**
 14 **ACCOUNTS AND SECTION 401(k) PLANS FOR**
 15 **LONG-TERM CARE INSURANCE.**

16 “(a) GENERAL RULE.—The amount includible in the
 17 gross income of an individual for the taxable year by rea-
 18 son of qualified distributions during such taxable year
 19 shall not exceed the excess of—

20 “(1) the amount which would (but for this sec-
 21 tion) be so includible by reason of such distributions,
 22 over

23 “(2) the aggregate premiums paid by such indi-
 24 vidual during such taxable year for any long-term
 25 care insurance contract (as defined in section 818A)

1 for the benefit of such individual or the spouse of
2 such individual.

3 “(b) QUALIFIED DISTRIBUTION.—For purposes of
4 this section, the term ‘qualified distribution’ means any
5 distribution to an individual from an individual retirement
6 account or a section 401(k) plan if such individual has
7 attained age 59½ on or before the date of the distribution
8 (and, in the case of a distribution used to pay premiums
9 for the benefit of the spouse of such individual, such
10 spouse has attained age 59½ on or before the date of the
11 distribution).

12 “(c) DEFINITIONS.—For purposes of this section—

13 “(1) INDIVIDUAL RETIREMENT ACCOUNT.—The
14 term ‘individual retirement account’ has the mean-
15 ing given such term by section 408(a).

16 “(2) SECTION 401(k) PLAN.—The term ‘section
17 401(k) plan’ means any employer plan which meets
18 the requirements of section 401(a) and which in-
19 cludes a qualified cash or deferred arrangement (as
20 defined in section 401(k)).

21 “(d) SPECIAL RULES FOR SECTION 401(k) PLANS.—

22 “(1) WITHDRAWALS CANNOT EXCEED ELEC-
23 TIVE CONTRIBUTIONS UNDER QUALIFIED CASH OR
24 DEFERRED ARRANGEMENT.—This section shall not
25 apply to any distribution from a section 401(k) plan

1 to the extent the aggregate amount of such distribu-
2 tions for the use described in subsection (a) exceeds
3 the aggregate employer contributions made pursuant
4 to the employee's election under section 401(k)(2).

5 “(2) WITHDRAWALS NOT TO CAUSE DISQUALI-
6 FICATION.—A plan shall not be treated as failing to
7 satisfy the requirements of section 401, and an ar-
8 rangement shall not be treated as failing to be a
9 qualified cash or deferred arrangement (as defined
10 in section 401(k)(2)), merely because under the plan
11 or arrangement distributions are permitted which
12 are excludable from gross income by reason of this
13 section.”

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 401(k) of such Code is amended by
16 adding at the end the following new paragraph:

17 “(11) CROSS REFERENCE.—

“For provision permitting tax-free withdrawals
for payment of long-term care premiums, see section
137.”

18 (2) Section 408(d) of such Code is amended by
19 adding at the end the following new paragraph:

1 “(8) CROSS REFERENCE.—

“For provision permitting tax-free withdrawals from individual retirement accounts for payment of long-term care premiums, see section 137.”

2 (3) The table of sections for such part III is
3 amended by striking the last item and inserting the
4 following new items:

“Sec. 137. Distributions from individual retirement accounts and section 401(k) plans for long-term care insurance.
“Sec. 138. Cross references to other Acts.”

5 **SEC. 306. TAX TREATMENT OF ACCELERATED DEATH BEN-**
6 **EFITS UNDER LIFE INSURANCE CONTRACTS.**

7 Section 101 of the Internal Revenue Code of 1986
8 (relating to certain death benefits) is amended by adding
9 at the end thereof the following new subsection:

10 “(g) TREATMENT OF CERTAIN ACCELERATED
11 DEATH BENEFITS.—

12 “(1) IN GENERAL.—For purposes of this sec-
13 tion, any amount paid or advanced to an individual
14 under a life insurance contract on the life of an in-
15 sured—

16 “(A) who is a terminally ill individual, or

17 “(B) who is a chronically ill individual (as
18 defined in section 818A(c)(2)) who is confined
19 to a qualified facility (as defined in section
20 818A(c)(3)(A)),

21 shall be treated as an amount paid by reason of the
22 death of such insured.

1 “(2) TERMINALLY ILL INDIVIDUAL.—For pur-
 2 poses of this subsection, the term ‘terminally ill indi-
 3 vidual’ means an individual who has been certified
 4 by a physician as having an illness or physical condi-
 5 tion which can reasonably be expected to result in
 6 death in 12 months or less.

7 “(3) PHYSICIAN.—For purposes of this sub-
 8 section, the term ‘physician’ has the meaning given
 9 to such term by section 213(d)(4).”

10 **SEC. 307. EFFECTIVE DATE.**

11 The amendments made by this title shall apply to tax-
 12 able years beginning after December 31, 1995.

13 **TITLE IV—SENIOR CITIZEN**
 14 **COMMUNITIES**

15 **SEC. 401. DEFINITION OF HOUSING FOR OLDER PERSONS.**

16 Subparagraph (C) of section 807(b)(2) of the Fair
 17 Housing Act (42 U.S.C. 3607(b)(2)) is amended to read
 18 as follows:

19 “(C) that meets the following requirements:

20 “(i) The housing is in a facility or commu-
 21 nity intended and operated for the occupancy of
 22 at least 80 percent of the occupied units by at
 23 least one person 55 years of age or older.

24 “(ii) The housing facility or community
 25 publishes and adheres to policies and proce-

1 dures that demonstrate the intent required
2 under clause (i), whether or not such policies
3 and procedures are set forth in the governing
4 documents of such facility or community.

5 “(iii) The housing facility or community
6 complies with rules made by the Secretary for
7 the verification of occupancy. Such rules shall
8 allow for that verification by reliable surveys
9 and affidavits and shall include examples of the
10 types of policies and procedures relevant to a
11 determination of compliance with the require-
12 ment of clause (ii). Such surveys and affidavits
13 shall be admissible in administrative and judi-
14 cial proceedings for the purposes of such ver-
15 ification.”.

16 **SEC. 402. GOOD FAITH ATTEMPT AT COMPLIANCE DE-**
17 **FENSE AGAINST CIVIL MONEY DAMAGES.**

18 Section 807(b) of the Fair Housing Act (42 U.S.C.
19 3607(b)) is amended by adding at the end the following:

20 “(5) An individual who engages in conduct with a
21 reasonable good faith reliance on the existence of the ex-
22 emption of this subsection relating to housing for older
23 persons is not personally liable for money damages for a
24 violation of this Act that such an exemption would have
25 vitiated. For purposes of this paragraph, a person engaged

1 in the business of residential real estate transactions is
2 presumed to have such a good faith reliance if that person
3 has no actual knowledge that the facility or community
4 is not or will not be eligible for such exception and the
5 facility or community gives such person a written certifi-
6 cation stating the compliance of the facility or community
7 with the requirements for such exception.”.

○

S 30 IS——2